



California Fair Political Practices Commission

July 16, 1987

Steve E. Kolodney, Director
Office of Information Technology
Department of Finance
1025 P Street
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-87-182

Dear Mr. Kolodney:

We are writing in response to your in-person request for advice regarding your reporting and disqualification obligations arising from a state business trip.

QUESTIONS

1. Are you required to report accommodations which you received during a trip which you took on state business?
2. If you received a gift, what is the value for reporting purposes?
3. Do you have any disqualification obligation as a result of receipt of the accommodations in conjunction with your trip?

CONCLUSIONS

1. You must report the accommodations as a gift on your annual statement of economic interests when you file that statement next spring.
2. The value is the fair market value for the accommodations, which may be determined by the amount which the donor (IBM) paid for your accommodations. This amount has been reported to you by the donor as \$529.
3. Because IBM was the donor of \$250 or more in gifts received by you in early February 1987, you must disqualify yourself from making or participating in decisions which will affect IBM's revenues, assets or liabilities by \$1 million or more, or which will affect IBM's expenses by \$250,000 or more. The period of this disqualification runs through February 4, 1988.

FACTS

You are the Director of the Office of Information Technology (OIT) within the Department of Finance for the State of California. Your office is responsible for planning and overseeing the development of technology in state government. OIT is not a procurement agency; all purchasing of technology hardware and software is handled through the Department of General Services, a separate agency. Instead, OIT deals with functional solutions to information management problems in state government. You deal not with specific equipment, but only with methods for solving problems. Consequently, your duties include being familiar with all of the latest technology as well as developing technology for use in gathering, managing and evaluating information.

The state has two major data centers: one at the Health and Welfare Agency, the other at Teale Data Center. Both of these centers have computer systems which have developed over the years and which are built around "IBM-established architecture." This means that the equipment used therein is either IBM or "IBM-compatible."

As a result, it is important for you, in your role of evaluating various potential solutions to the state's needs, to "understand where IBM is going." Whether its products are ultimately purchased or not, as a practical matter IBM dictates the direction the technology will be taking in the future.

This year, for the first time in its history, IBM decided to hold a three-day meeting to share with its biggest customers where it was going in the future. IBM invited its 200 largest customers in the country to attend the meeting. Included were executives of the largest corporations, banks, utility companies, various state governments, yourself, and a representative from the University of California. All attendees were required to sign confidentiality statements of non-disclosure with respect to the information which was to be provided to them.

During the three-day meeting, there were numerous sessions on different topics at which speakers addressed the assembled clients about products. There were also product demonstrations (including some "hands-on" training), and various written materials were provided. All of the information presented was for the purpose of assisting clients in planning for future developments in the field of information technology. Your role was one of attendee only; you were not a speaker.

The agenda was full for 2-1/2 days. It included group meals for breakfast, lunch and dinner at the Orlando, Florida hotel where the event was being held. No recreational activities (e.g., golf or tennis) were provided. Entertainment was provided at the evening meals on two of the nights. There were no "cocktail" type receptions or similar events. You arrived on Sunday, February 1, 1987, and departed on Wednesday, February 4, 1987. Hence, you stayed three nights at the hotel.

The state paid for your round-trip air fare, rental car and parking. IBM donated the costs for the room and meals attendant to the meeting. IBM has since reported to you that the value for those meals and the lodging totaled \$529.

ANALYSIS

The Political Reform Act (the "Act")^{1/} requires that a public official make certain financial disclosures as required by his or her agency's conflict of interest code. (Section 87302.) As a high-ranking official of your agency, the disclosure categories assigned to your position by your agency's code include:

...business entities in which they have investments or business positions, and income, if the business entity or source of income sells or leases electronic data processing: products, facilities, supplies or services.

Dept. of Finance, Conflict of
Interest Code, Disclosure
Category III.

Income, as defined in the Act, includes gifts. (Section 82030(a).) Gifts are defined in Section 82028 as follows:

(a) "Gift" means, except as provided in subdivision (b), any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status....

(b) The term "gift" does not include:

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

Section 82028(a) and (b)(1).
(Emphasis added.)

You received informational materials at the meeting and, therefore, the value of the materials, training and information itself is not considered a gift. (See, Newman Advice Letter, No. A-84-187; and Upholt Advice Letter, No. A-82-147, copies enclosed.) However, the lodging and meals provided by IBM on your behalf constitute "reimbursement for expenses" within the meaning of Section 82028(b)(1) because they are expenses which otherwise would have been incurred by you. Consequently, those benefits provided to you are gifts and must be disclosed on your annual statement of economic interests if their value exceeds \$50 and if IBM is a business entity described in your disclosure category. Clearly both of these are the case. IBM sells or leases data processing equipment to the state. IBM has advised you that the value of these benefits totaled \$529.^{2/}

The accommodations constitute a gift to you even though you were on legitimate state business. Reimbursements for travel and expenses (or provision thereof) by private parties to officials are gifts to the officials when traveling on official business unless the provision of travel expenses meets the criteria set forth in the Commission's Stone Opinion, 3 FPPC Ops. 52, 57 (No. 77-003, June 7, 1977) (copy enclosed). Those criteria were not met in this instance. Consequently, the gift of accommodations must be reported.

In addition to the required disclosure, the Act also requires that a public official disqualify himself from making, participating in making, or using his official position to influence any governmental decision in which he has a financial interest. (Section 87100.) An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on:

^{2/} Under Regulation 18726, you are required to value the gifts at fair market value, but may use the cost to the donor as an estimate of fair market value. In this case, that is appropriate.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(e).

IBM is a donor of \$250 or more in gifts received by you during the preceding 12 months. Therefore, you must disqualify yourself from making, participating in making, or using your official position to influence any decision which will result in a reasonably foreseeable material financial effect on IBM.

You are not involved in making actual purchases; consequently IBM does not "appear" before you in your decision-making role within the meaning of Regulation 18702.1. Therefore, we are guided by the provisions of Regulation 18702.2 (copy enclosed). IBM is listed on the Fortune 500. Therefore, in order for a decision's effect to be considered material, it must increase or decrease IBM's annualized gross revenues or its assets or liabilities by \$1 million or more, or the decision must increase or decrease IBM's expenses by \$250,000 or more.

Consequently, you must disqualify yourself from participating in any way in any OIT decisions which will be likely to affect IBM by any of those amounts. You also may not use your official position to attempt to influence another agency's decision, such as General Services, when its decision will involve such an effect on IBM. The period of this disqualification will continue until February 4, 1988.

If the need to disqualify should arise, you should note your disqualification in a memorandum to your supervisor and have the decision-making role delegated to someone else who will act without your input. (See, Regulation 18700(a)(5), copy enclosed.)

I trust that this letter adequately responds to your questions. Should you have questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

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Enclosures